REMARKS

Claims 1-19 are the pending claims being examined in the application. Claim 19 has been added. No new matter is presented. Claims 1, 10, 18 and 19 are independent. Claim 18 has been amended. No new matter has been added. Reconsideration and further examination are respectfully requested.

Pages 2-3 of the Office Action state, in the Response to Arguments section, that the claim language "does not appear to be accurately claiming the subject matter that Applicant is arguing" and that the phrase "during retrieval" is limiting. Applicant respectfully disagrees and submits that the recited claim language "during retrieval of a content file" is clear and does not need to be amended. Reconsideration is earnestly requested.

Claim 18 was objected to because it recites "'computer readable medium' which is not otherwise limited in the specification and could be open to interpretation such as signals." (Office Action, Page 3). Applicant respectfully disagrees. Applicant's Specification discloses and describes computer readable medium at, for example, Paragraphs [0017], [0036], and [0041]. As a result, Applicant respectfully requests that the objection to claim 18 be removed.

Claims 1, 7, 10 and 18 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as the invention. The Office Action states that the term "dynamically" is "a relative term which renders the claim indefinite." The Office Action additionally states that the term "dynamically" is not "defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention." Applicant respectfully disagrees.

In the first instance, one skilled in the computer arts would readily recognize the term dynamic, in accord with its ordinary meaning, as something that is active, and not static.

Moreover, and further with respect to its usage and understanding in the art, when Applicant performs (on July 2, 2009) a search of the U.S. Patent Office web site for

issued patents that contain, in one or more of their claims, "dynamically determine", the results show 171 issued patents that contain this exact phrase in one or more claims, the majority of these patents being related to the computer arts, thus indicating its common usage in the art.

Still further, as an example, the term "dynamically" is described in the Specification at, *inter alia,* Paragraph [0044]:

> In other embodiments, the bandwidth measurement device 36 determines network connection bandwidth dynamically during the transfer by issuing "ping" commands periodically during the data transfer.

As a result, Applicant respectfully submits that this claim rejection be reconsidered and withdrawn.

Claim 7 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as the invention. In response, Applicant has cancelled claim 7 and rewritten claim 7 as a new independent claim 19.

Claim 18 was also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as the invention. In response, claim 18 has been amended. As a result, Applicant respectfully submits that this rejection is now moot.

Claims 1-13 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,859,840 (Singal) in view of U.S. Publication No. 2001/0029523 (Mcternan) and in further view of U.S. Publication No. 2003/0016630 (Vega-Garcia); Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan and Vega-Garcia, and further in view of U.S. Publication No. 2004/0128343 (Mayer). Reconsideration and withdrawal of the rejections are respectfully requested for at least the following reasons.

Claim 1 recites a system comprising a mass storage device; a processor; a bandwidth measurement device executed by the processor for dynamically determining during retrieval of a content file, a bandwidth of a network connection over which the content file is being retrieved; a download manager executed by the processor for retrieving, and storing in the mass storage device, a portion of the content file, the

download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement device; and a presentation manager executed by the processor for retrieving the portion of the content file from mass storage and displaying the portion with a media player application, wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file.

Independent claim 1 recites, in part, "wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file." Applicant respectfully submits that none of the cited references disclose this claim element.

Singal teaches delivering a media object to a user over a network, whereby the media object is divided into first portions and remaining portions. The first portions are stored on an edge server and the remaining portions are stored on an origin server, whereby the servers are in communication with the user. Upon receiving a request for delivery from a user, the edge server transmits the first portion of the media object to the user. The edge server then requests delivery of the remaining portions from the origin server.

Singal further teaches the edge server searching a prefix cache to determine if object information matching the media object requested by the user is stored. If the media object is not stored in the prefix cache, available bandwidth is examined and a transfer rate (greater than zero and less than or equal to the available bandwidth) is reserved. Subsequently, a new prefix cache size is calculated, whereby additional data may be loaded. The reserved transfer rate may be used to transfer the additional data that may be loaded. Singal teaches resizing a cache upon the determination that a media file is unavailable, and recalculating a transfer rate for additional data to be uploaded into the cache.

Singal does not teach or suggest "wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file," as claimed in independent claim 1. The Office Action refers to Figure 5, col. 6, lines 50-67, and col. 7, lines 1-20 of Singal as disclosing this feature.

It is respectfully submitted that these passages and Figure 5 of Singal do not, however, disclose this feature. Specifically, Fig. 5 of Singal as well as col. 6, lines 50-67 and col. 7, lines 1-20 of Singal disclose querying for available bandwidth in step 158 if a media object is unavailable. After the querying, Singal computes a prefix size (step 160) and then loads the data in step 162. Singal continues, "the media suffix is loaded in parallel, and the media object is streamed to the user (step 168). While steps 166 and 168 are shown in a sequential order, streaming in step 168 may also begin before or concurrently with step 166." (Col. 7, lines 4-9).

Singal discloses loading its media suffix and streaming the media object as two independent steps that may occur sequentially or concurrently. This is not the same as a presentation manager retrieving a portion of the content file and displaying the portion with a media player application and then the download manager retrieving a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file, as claimed in independent claim 1. There is no retrieval of a remainder of a content file in response to the displaying of a (previously) retrieved portion of the content file, as claimed in independent claim 1.

Mcternan does not cure the deficiencies of Singal. Mcternan teaches systems and methods that allow the efficient distribution of rich media to clients by maximizing the use of available bandwidth and client processing capabilities. A rich media presentation is divided into discrete components, and a producer of the presentation specifies how a presentation is to be assembled and where resources needed for the presentation are to be found. This information is packaged into a data structure and sent to clients. Clients use this data structure to retrieve the necessary resources for the presentation. Producers are able to prioritize the particular resources that form part of the ultimate presentation according to their importance in the presentation, and clients can retrieve the resources most suitable for their capabilities, including processing power, graphics production speed, and bandwidth. A benchmarker routine running on the client helps identify these capabilities just before retrieval of the presentation components, to more closely assess the conditions under which the client will retrieve, assemble and present the desired show.

Applicant submits that Mcternan's system for accounting for variations in client capabilities in the distribution of a media presentation does not teach, suggest or disclose the claimed subject matter of claim 1, which recites, *inter alia*, wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file.

Further, Vega-Garcia does not cure the deficiencies of Singal and Mcternan. Vega-Garcia discloses a method and system for dynamically altering the transmission settings of one or more computing devices engaged in a real-time communication session. The devices exchange meaningful and dummy control packets according to a standard control protocol. The approximate bandwidth available on the network is then calculated based on the difference in arrival times between at least one of the dummy control packets and at least one of the meaningful control packets. Once the approximate bandwidth available on the network is computed, the one or more devices adjust outgoing audio and video data streams using a quality control mechanism. The quality control mechanism enables the one or more devices to transmit data in a way that maximizes the user experience during the real-time communication session.

Vega-Garcia does not, however, disclose wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file, as recited in independent claim 1. As a result, Claim 1 is patentable over Singal, Mcternan, and Vega-Garcia, and Applicant respectfully requests that the Examiner withdraw the rejection. Nor could Singal, Mcternan, and Vega-Garcia, alone or in combination with any other reference of record, render Claim 1 obvious, as no such combination would yield all of the elements in the presently recited claims. Therefore, Singal, Mcternan, and Vega-Garcia cannot form the basis of a proper § 103 rejection and a combination with other references would not form the basis of a proper § 103 rejection. Therefore, Applicant respectfully requests withdrawal of these rejections.

For at least the foregoing reasons, Claim 1 and the claims that depend from Claim 1 are believed to be in condition for allowance. In addition, for at least the same reasons, Claims 10, 18, and 19 are believed to be in condition for allowance; thus, the claims that depend from Claims 10 are also believed to be in condition for allowance. In view of the

foregoing, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan and Vega-Garcia, and further in view of Mayer. Claim 10, from which Claim 14 depends, claims similar features to claim 1. It is respectfully submitted that Mayer does not remedy the deficiencies noted above with respect to claim 1. Therefore, Applicants submit that a combination of Singal, Mcternan, Vega-Garcia, and Mayer would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection.

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner, and Applicant respectfully preserves their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

The Applicant's attorney may be reached by telephone at 212-801-9220. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

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The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted,

Date: July 6, 2009

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